



Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: Liquid Asphalt 2014		
Doc ID No: MA 605 1400000676 1	Proc Folder: 3214304	
Procurement Type: Standard Goods		
Effective Date: 2014-03-01	Expiration Date: 2015-02-28	Not To Exceed Amount
Administered By: NANCY ALBRIGHT		Cited Authority: FAP111-35-00-G
Telephone: 502-564-4556		Issued By: Laura Hagan
V E N D O R ASPHALT MATERIALS INC PO BOX 2454 300 EAST DIXIE ELIZABETHTOWN KY 42702 US		

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Liquid Asphalt	0	0.00	GAL	0.00000	0.00	0.00

Extended Description

Vendor Rep:
 Tim Crutcher
 270-737-4144
 tim.crutcher@asphalt-materials.com

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	Catalog		0.00		0.00000	0.00	0.00

Extended Description

Catalog

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MA 1

Section 1 - Specifications

Deliver all liquid asphalt materials and Vendor's storage tanks, with the transportation charges prepaid, to any point in each county in the Commonwealth of Kentucky, which is proposed on the bid forms and indicated on subsequent Delivery Orders.

By bidding and accepting a Contract, Vendors agree to maintain inventories of the material(s) offered and to treat the Transportation Cabinet as a preferred and priority customer as it relates to the availability of material(s). Failure to do so may be cause for Contract cancellation. When material is not provided as per this paragraph, the Division of Purchases reserves the right to make the purchase on the open market, with any cost in excess of the Contract price paid by the successful bidder.

1.00—Specifications of Commodity and/or Service Requirements

Except as provided herein, conform to all requirements of the Kentucky Transportation Cabinet's 2012 Standard Specifications for Road and Bridge Construction. Section references herein are to the Cabinet's 2012 Standard Specifications. The term "Vendor" in this Contract shall be understood to be synonymous with the term "Contractor" in the Standard Specifications.

STANDARD DRAWINGS AND SPECIFICATION LINKS:

A link to the Standard Drawings can be found at:

<http://transportation.ky.gov/Highway-Design/Pages/2012-Standard-Drawings.aspx>

A link to the Standard Specifications can be found at:

<http://transportation.ky.gov/Construction/Pages/Kentucky-Standard-Specifications.aspx>

1.01—Liquid Asphalt Material Requirements

Except as provided herein, furnish materials in Groups 1 through 6 conforming to Section 806.

- Item 1 - Emulsified Asphalt, AE-200
- Item 2 - Polymer-Asphalt Emulsion (Cationic), CRS-2P
- Item 3 - Emulsified Asphalt, HFMS-2
- Item 4 - Emulsified Asphalt, HFRS-2
- Item 5 - Emulsified Asphalt, RS-2
- Item 6 - Emulsified Asphalt, SS-1h

1.02—Sampling, Testing, and Compliance

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All liquid asphalt materials shall be accepted according to Section 806 and the current procedures established by the Department of Highways, Division of Materials. A copy of the Vendor's bill-of-lading/loading ticket is required with each shipment. The alternate method of acceptance described in Section 806 by sampling and testing after delivery of the materials shall not apply.

The Vendor shall be responsible for any related unsatisfactory performance as determined by the Engineer. Such responsibility may result in no payment for the emulsified asphalt and reimbursement to the Transportation Cabinet for lost materials, labor, and equipment charges due to the unsatisfactory performance.

Invoice to the Transportation Cabinet any adjustments due according to the price adjustment schedules in Subsections 806.04 and 806.05, as applicable. Issue a Credit Memorandum to the affected District Office, Attention: Bookkeeper.

1.03—Method of Delivery

The method of delivery will be at the discretion of the Chief District Engineer or his authorized representative:

Delivered – Deliver the liquid asphalt material by transport tank trucks FOB destination to any point in each county in the Commonwealth of Kentucky.

Picked Up – Deliver the liquid asphalt material directly into State vehicles FOB the Vendor's local plants or storage tanks located at the delivery points listed on the bid forms. Provide facilities for loading and weighing the materials delivered into State vehicles at the Vendor's terminal.

Vendor's Storage Tank – When requested by the Engineer, furnish a Vendor-owned storage tank(s) FOB destination to any point in each county. Relocate the tank as requested by the Engineer; however, the Engineer will not request relocations of less than 10 miles. No heating equipment will be required in the Vendor's storage tank(s). Railroad tank cars will not be considered storage tanks where transport tank truck deliveries are to be made. Storage tanks must be approved, and prior approval must be granted, before any shipment is made. The location of the storage tanks shall be as directed by the Engineer.

Deliver the liquid asphalt material at such a time, location, and in tanker truck lots of approximately 5,400 gallons as directed by the Chief District Engineer or his authorized representative. When a delivery request is made, there shall be an agreed-upon time for the arrival of the material. The Engineer will allow a minimum of 16 hours after the receipt of the order for the initial delivery. Verbal orders will be confirmed by written requests for delivery. Do not exceed the legal or authorized truck weight limits.

Deliver the Vendor-owned storage tank(s) at such a time, location, and in such a quantity as directed by the Chief District Engineer or his authorized representative. When a delivery request is made, there shall be an agreed-upon time for the arrival of the tank. Unless agreed otherwise by the Vendor when the order is placed, the Engineer will allow a minimum of 72 hours after the receipt of the order for delivery. Verbal

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orders will be confirmed by written requests for delivery.

Any cancellation of the agreed-upon delivery time by either the Vendor or Engineer shall be made at least six (6) hours prior to the agreed-upon time.

The Vendor or Carrier shall notify the Chief District Engineer or his authorized representative of any anticipated delay in delivery in excess of two hours. Failure to notify the Chief District Engineer of any delay in excess of two hours may constitute grounds for refusing delivery of the material.

Allow one and one-half hours of free time for unloading the transport tank trucks. Any time required in excess of the free time, unless directly chargeable to the Carrier's own equipment or an error on the part of the Carrier's personnel, may be charged as demurrage at the rate of \$12.50 per quarter hour (15 minutes), or fractional part thereof. The Engineer will determine the length of unloading time from the time the Carrier's truck arrives at the specified delivery location, ready to unload, to the time when all connections are removed, the necessary shipping documents executed, and the Carrier's truck is ready to depart.

At the time of delivery, substantiate all charges for demurrage with the amount of time and reason for the delay being shown on the weight ticket or bill-of-lading copy which is signed and retained by the receiving Department of Highways personnel. Invoices for demurrage submitted by the Vendor which cannot be substantiated in this manner will not be processed for payment.

If a Vendor fails to make the requested deliveries as set forth above, the Division of Purchases may exercise the option of canceling the Contract and purchase the material not furnished by the Vendor from another source. All costs and expenses in excess of the stipulated Contract amounts will be charged to the defaulting Vendor and may be deducted from any money due him at the time of the default.

The Vendor will not be held responsible for failure to deliver the liquid asphalt material if the failure is due to an act beyond his control, such as availability of raw materials, a general strike, war, flood, tornado, etc. Immediately submit written proof to the Chief District Engineer and Director of the Division of Purchases that the failure to deliver was beyond the Vendor's control.

The Department of Highways' storage tanks and maintenance lots will be made available for unloading the Vendor's transport tank trucks on a 24-hour basis insofar as is consistent with the Department's operations.

1.04 - Method of Measurement

Delivered and Picked Up – Liquid asphalt material will be measured in gallons according to Section 109.

Vendor's Storage Tank – A delivery day will be measured for each tank(s) for each day that a transport tank truck delivery is made in the county where the Chief District Engineer requests that a tank be placed.

1.05 – Price Adjustments

Asphalt Adjustment - Once a month, the Department will compare the Kentucky Average Price Index (KAPI) for that month with the KAPI for the month in which the contract is let to determine the percent change. When the average price of the liquid asphalt increases or decreases more than fifteen percent

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from the original bid price, the Department will adjust the Contractor's compensation. If a price adjustment is necessary, the adjusted price will take effect the first day of the following month and will remain in effect for all Delivery Orders issued that month. The KAPI is calculated monthly using the average price, per ton at the terminal, from the active suppliers of liquid asphalt. Asphalt content will be calculated at sixty percent in all groups on this contract. The Department will determine the price adjustment using the following formulas:

When PC is greater than PL:

$$\text{Asphalt Price Adjustment} = \frac{0.6 \times \text{PL} \times [(\text{PC} - \text{PL})/\text{PL} - 0.15]}{240}$$

When PC is less than PL:

$$\text{Asphalt Price Adjustment} = \frac{0.6 \times \text{PL} \times [(\text{PC} - \text{PL})/\text{PL} + 0.15]}{240}$$

Where:

PL = KAPI for the month that the contract is let

PC = KAPI for the month of adjustment

For the Kentucky Average Price Index (KAPI) go to
<http://transportation.ky.gov/Construction/Pages/Fuel-and-Asphalt-Adjustment.aspx>.

The adjustment schedule is as follows:

Month Let February 2014
Contract Effective Date March 1, 2014

1st Adjustment Evaluation March 2014
Adjustment (if necessary) Effective April 1, 2014

Prices will be compared each month thereafter and adjusted if necessary until contract expiration.

1.05—Basis of Payment

Delivered and Picked Up – Payment for liquid asphalt materials purchased hereunder will be made at the bidder's quoted price per gallon as proposed on the attached bid form upon the submission to the receiving agent of the proper invoices for the materials delivered and accepted.

Charges for material and demurrage must be invoiced as separate line items on the same invoice. Payment will be made based on the total quantity received times the unit price for each item on the Delivery Order. Unless otherwise specified, payment will not be made for partial deliveries accepted. NO PAYMENT WILL BE MADE FOR THAT PORTION OF ANY LOAD THAT EXCEEDS THE LEGAL OR AUTHORIZED LOAD LIMIT.

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Vendor's Storage Tank – Payment for the Vendor's storage tank will be at the agreed price of \$50.00 per delivery day and shall be full compensation for delivering the tank(s) to any point in each county in the Commonwealth of Kentucky, relocating the tank as requested by the Engineer, and removing the tank when liquid asphalt deliveries are completed.

When the materials fail to meet specifications and are rejected by the Engineer, the Vendor shall pay the return freight, demurrage, and all other charges resulting from the failure.

Section 2—Terms and Conditions of the Master Agreement

2.00—Scope of the Contract

The KYTC Division of Purchases issues this Master Agreement for:

Liquid Asphalt 2014

2.01—Contract Components and Order of Precedence

The Commonwealth's acceptance of the offer indicated by the issuance of an Award by the KYTC Division of Purchases shall create a valid Master Agreement consisting of the following:

1. The written Master Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. Any provisions of the Solicitation and all attachments thereto;
4. The Bidder's response to the Solicitation, and
5. The Kentucky Revised Statutes KRS 45A.

In the event of an inconsistency between provisions of the solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Specifications; (b) other provisions of the Solicitation, whether incorporated by reference or otherwise; (c) Contract or Master Agreement Terms and Conditions; (d) FAP 110-10-00 – General Conditions and Instructions for Solicitations and Contracts.

2.02—Initial Contract Period

The Master Agreement will be effective March 1, 2014 and expire February 28, 2015.

2.03—Optional Renewal Period

Not applicable.

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2.04—Divisions/Agencies to Be Served

This contract shall be for use by the following Divisions/Agencies of the Commonwealth:

ALL STATE AGENCIES AND THEIR POLITICAL SUBDIVISIONS (County Governments, Schools, Universities, etc.)

This Contract designates specific Contractual responsibilities to Transportation Cabinet offices and personnel. If Contracts are used by political subdivisions and state agencies other than the Transportation Cabinet, such responsibilities will be assumed by the user agency. All billing and payments for materials purchased from an agreement(s) will be directly between the user agencies and Vendors.

No shipments or services are authorized until an official Delivery Order has been fully processed by an authorized agency.

2.05—Quantity Basis of Contract

This Master Agreement has no guarantee of any specific quantity, and the State is obligated only to buy that quantity which is needed by its agencies.

2.06—Exception to Required Use of Contract

The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to acquire large requirements through other competitive processes.

2.07—Basis of Price Revisions

See Section 1.05.

2.08—Addition or Deletion of Items or Services

The KYTC Division of Purchases reserves the right to add new and similar items, with the consent of the vendor, to the contract. If an addition is agreeable to both parties, the KYTC Division of Purchases will issue a Modification. Until such time as the vendor receives a Modification, the vendor shall not accept Delivery Orders from any agency referencing such items or services.

2.09—Changes and Modifications to the Contract

During the period of the contract, a modification shall not be permitted in any of its conditions and specifications, unless the contractor receives electronic or written approval from the KYTC Division of Purchases. If the contractor finds at any time that existing conditions make modification in requirements necessary, the contractor shall report the matter promptly to the KYTC Division of Purchases for consideration and decision. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

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2.10-Equipment

All equipment must be new and current model(s). The Commonwealth recognizes the rapid advancement of technology. If the vendor can provide new equipment of advanced technology after the award of the contract, the Commonwealth and the bidder may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award contract.

2.11—Basis of Shipment

All shipments shall be F.O.B. Destination to the receiving agency. The vendor shall be fully responsible for all shipments and freight charges involved to the ordering agency. The responsibility for filing freight claims lies with the vendor.

2.12—Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Master Agreement shall be in writing.

After the Award, all programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Division of Purchases.

Wheeler Nevels, Rusty Wallace, or T.J. Gilpin

Division of Maintenance

Kentucky Transportation Cabinet

Phone: 502-564-4556

E-mail: Wheeler.Nevels@ky.gov, Rusty.Wallace@ky.gov, or Thomas.Gilpin@ky.gov

With copy to:

Laura Hagan, CPPO, CPPB

Division of Purchases

Kentucky Transportation Cabinet

Phone: 502-564-4630

E-mail: Laura.Hagan@ky.gov

After the Award, all communications of a contractual or legal nature are to be made to the KYTC Division of Purchases.

2.13—Deliveries

See Section 1.04.

2.14—Inspection

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All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the vendor's expense.

2.15—Invoices

Invoices, if required, shall be prepared and transmitted to the agency receiving the goods or services. One copy shall be marked "original" unless otherwise specified. Each invoice shall contain at least the following information:

- a. Contract and delivery order number;
- b. Item numbers;
- c. Description of supplies or services;
- d. Sizes;
- e. Quantities;
- f. Unit prices; and
- g. Extended totals.

2.16—Payments

The Vendor shall be paid upon the submission of the proper invoices to the receiving unit at the prices stipulated for the materials and services delivered and accepted. Payment will not be made for partial deliveries. In the event that the Vendor allows the Delivery Order to expire without being completed, two percent of the uncompleted value of the expired Delivery Order will be deducted from the next Delivery Order issued to the Vendor regardless of location.

Termination of the Contract(s) shall be understood to be February 28, 2015 and any and all items or portions of items not delivered on or prior to that date shall be considered cancelled after that date. There will be no claim for damages allowed by reason of cancellation thereof.

A bill shall be paid within 30 working days of either the receipt of correct invoice, or receipt of goods or services in satisfactory condition. A penalty payment of one percent (1%) per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days.

2.17—Post Contract Agreements

The Master Agreement shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject

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matter hereof shall be of no effect upon this contract. The Commonwealth shall not be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of the contract. Any such documents so obtained will be non-binding on the State and be cause for breach of contract.

2.18—Service Performance

All services performed under contract shall be in accordance with the terms and conditions of the contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

Deviations of services performed will not be made without the written approval of the KYTC Division of Purchases. Problems that arise under any aspect of performance should first be resolved between the vendor and the agency. If such problems and/or disagreements cannot be resolved they should be referred to the KYTC Division of Purchases for mediation.

2.19—Assignment

The vendor shall not assign this Master Agreement in whole or in part to another vendor at any time during the initial or optional renewal terms of the contract, without the consent, guidance and approval of the Commonwealth. Any assignment hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Any purported assignment without this consent shall be null and void.

2.20—Termination of Contracts

A contract may be terminated for default by the vendor, for the convenience of the Commonwealth, or for lack of appropriation in accordance with 200 KAR 5:312.

2.21— Endorsements

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

2.22- Secretary of State Filing

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate

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within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

2.23-EEO ACT

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The Contractor shall comply with all terms and conditions of the Act, if applicable.

1. Failure to comply with the Act may result in non-award, withdrawal of award, cessation of contract payments, etc.
2. Vendors/Contractors must submit the following documents in accordance with the requirements of the solicitation—EEO-1: Employer Information Report, Affidavit of Intent to Comply and Subcontractor Report or a copy of the Kentucky EEO Approval Letter issued by the Finance and Administration Cabinet, Office of EEO and Contract Compliance.
3. Vendors/Contractors may obtain copies of the required EEO documents from the Finance and Administration Cabinet's Web page at the following address:
<http://finance.ky.gov/SERVICES/FORMS/Pages/default.aspx>
Scroll down to the section labeled procurement.
4. Vendors/Contractors must advise each subcontractor/subvendor—with a subcontract of more than \$500,000—of the subcontractor's obligation to comply with the KY EEO Act. Further, Vendors/Contractors are responsible for compiling EEO documentation from their subcontractors/subvendors and submitting the documentation to the Finance and Administration Cabinet, Office of EEO and Contract Compliance. (Note: contracts below the second tier are exempt from EEO reporting.)
5. Failure to complete, sign and submit all required documents will delay the award process as incomplete submissions will not be processed. Further, alternate versions of the required documents will not be accepted or processed.
6. Pursuant to KRS 45.610 (2), the Finance and Administration Cabinet, Office of EEO and Contract Compliance reserves the right to request additional information and/or documentation and to conduct on-site monitoring reviews of project sites and/or business facilities at any point for the duration of any contract which exceeds \$500,000 to ascertain compliance with the Act and such rules, regulations and orders issued pursuant thereto.

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7. All questions regarding EEO forms or contract compliance issues must be directed to the Finance and Administration Cabinet, Office of EEO and Contract Compliance via e-mail: Finance.ContractCompliance@ky.gov or via telephone: (502) 564-2874.

2.24—Prevailing Wage

If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

2.25—Kentucky Sales and Use Taxes

Sales of tangible personal property or services to the State of Kentucky and its agencies are not subject to state sales or use taxes.

2.26—Extension Period

This contract may be extended at the termination of all contract renewal periods for additional time not to exceed **90 days**. This extension must be accompanied by the written approval of the vendor and the Division of Purchases

2.27—Extending Master Agreement To Other Agencies

The Division of Purchases reserves the right, with the consent of the vendor, to offer this master agreement to other state agencies or political subdivisions who may have need for the product (s).

2.28—Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

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2.29-Records Retention

The Finance and Administration Cabinet may inspect the place of business of the Vendor or any sub Vendor under the master Agreement contract awarded or to be awarded by the Commonwealth. In accordance with KRS 45A.150, the Finance and Administration Cabinet may audit the books and records of any person who has submitted cost or pricing data under KRS 45A.120 at any time until three years from the date of final payment under the prime contract, and by any subcontractor for a period of three years from the date of final payment under the subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the contract and by any subcontractor for a period of three years from the date of final payment under the subcontract. The Finance and Administration Cabinet shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price type contract, provided, however, that this provision shall not limit the right to audit stated above. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract. The contractor shall place such the same audit requirement in any agreement it may have with a subcontractor under this contract.

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SECRETARY'S ORDER 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.
- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

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- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.